

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
LAREDO DIVISION**

UNITED STATES OF AMERICA,)
Plaintiff,)
v.) Case No. 5:21-cv-00138
MIGUEL E. MIRELES,)
Defendant.)

JOINT ADVISORY

Pursuant to the Court's order, DKT. #15 the parties file this joint advisory and state as follows:

(1) The United States determined that on or about January 8, 2016, Mireles made a payment to the IRS totaling \$207,616 by two cashier's checks. Mireles made the \$207,616 payment to the IRS regarding his Offshore Voluntary Disclosure Program (OVDP) submission to the IRS. Mireles was ultimately removed from the OVDP. Thus, the United States asserts that the \$207,616 payment to the IRS was not made as part of the Title 31, "failure to file FBARs" exam process. The United States determined that the \$207,616 was a payment, not a bond or deposit. It appears that the \$207,616 was applied to Form 5471 penalties under 26 U.S.C § 6038(b)¹ and/or Form 8938 penalties under 26 U.S.C § 6038D² that were assessed against Mireles. The United States is still determining which penalties and years the \$207,616 was applied. The United States asserts that the 26 U.S.C §§ 6038(b) and 6038D penalties assessed against Mireles are not at issue before this Court. Mireles is reviewing the aforementioned

¹ Generally, the Form 5471 penalty relates to a taxpayer failing to disclose to the IRS his or her interest in a foreign corporation.

² Generally, the Form 8938 penalty relates to a taxpayer failing to disclose to the IRS his or her interest in specified foreign financial assets.

information to determine an appropriate response.

(2) On June 21, 2022, the petition for writ of certiorari was granted in the case of *United States v. Bittner*, 19 F.4th 734 (5th Cir. 2021). See *United States Supreme Court Case No. 21-1195*. The date for oral argument in the Supreme Court case has not been set.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on July 12, 2022, I filed the foregoing document by electronic means on all parties who have entered an appearance through the Court's ECF system, including the following:

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